

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BILLY G. JOHNSON,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 01-61-SLR
)	
RICK KEARNEY, Warden, and)	
ATTORNEY GENERAL OF THE)	
STATE OF DELAWARE,)	
)	
Respondents.)	

Billy G. Johnson, Sussex Correctional Institution, Georgetown,
Delaware. Petitioner, pro se.

Loren C. Meyers, Chief of Appeals Division, Delaware Department
of Justice, Wilmington, Delaware. Counsel for Respondents.

MEMORANDUM OPINION

Dated: March 18, 2002
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

Petitioner Billy G. Johnson is an inmate at Sussex Correctional Institution in Georgetown, Delaware. Currently before the court is petitioner's application for habeas relief pursuant to 28 U.S.C. § 2254. (D.I. 1) Because petitioner's application is without merit, the court shall deny petitioner's request for habeas relief.

II. BACKGROUND

In November 1997, the State of Delaware filed an information in Delaware Superior Court (Sussex County), charging petitioner with delivery of cocaine. (D.I. 15) On March 5, 1998, petitioner pled guilty to the offense, and was sentenced to three years imprisonment with credit for time served. After a total of nine months imprisonment, the balance of petitioner's sentence was suspended for six months home confinement and twenty-one months probation. (Id.)

On April 27, 2000, petitioner's probation officer filed a violation report with the Superior Court, alleging that petitioner tested positive for illegal substances on two separate occasions. (Id.) In a letter dated May 3, 2000, the Superior Court notified petitioner that a revocation hearing was scheduled for May 26, 2000. (Id.) At the hearing, petitioner admitted to having tested positive for marijuana and cocaine on February 29, 2000, and for cocaine on April 11, 2000. (Id.) The Superior

Court revoked petitioner's probation and sentenced him to twenty-seven months imprisonment, with credit for time served. Upon completion of an in-prison drug treatment program, the balance of petitioner's sentence would be suspended for fifteen months probation. (Id.) On June 19, 2000, petitioner filed a motion for reduction of his sentence, which was denied by the Superior Court on June 21, 2000. (Id.)

Petitioner filed timely notices of appeal challenging the revocation of probation and the denial of his motion for the reduction of his sentence. (Id.) Petitioner argued, inter alia, that: (1) there was no evidence presented at the hearing that he committed a probation violation; (2) he was not provided a written statement of the evidence against him; (3) he was not provided counsel to represent him at the hearing; (4) he was not provided with a statement of the alleged violation; and (5) he was denied the opportunity to present evidence in his own behalf and question adverse witnesses. See Johnson v. State, 765 A.2d 951 (Del. Dec. 13, 2000); Johnson v. State, 765 A.2d 952 (Del. Dec. 13, 2000). On December 13, 2000, the Delaware Supreme Court held that: (1) the probation report, statement of his probation officer, and petitioner's admission to testing positive for illegal drugs on two occasions supported a finding that he violated his probation; (2) petitioner received adequate written notice of the alleged violation, disclosure of the evidence

against him, an opportunity to appear and present evidence on his own behalf, the opportunity to question adverse witnesses, and the notice of his right to retain counsel; and (3) the Superior Court was under no obligation to appoint counsel to represent petitioner at the revocation hearing. See id.

In petitioner's instant federal habeas application dated January 29, 2001, petitioner raises the following challenges to the revocation of probation proceedings: (1) the evidence was insufficient to prove that he had violated his probation; (2) he never received notice of the alleged violations; (3) the Superior Court failed to appoint counsel to represent him at the revocation hearing; (4) the Superior Court judge did not provide a written statement explaining his decision; and (5) petitioner was denied the opportunity to appear and present evidence on his own behalf. (D.I. 1)

III. DISCUSSION

Because petitioner fairly presented his federal claims in state court, he has exhausted his state remedies and this court must address the merits of his claims. See Doctor v. Walters, 96 F.3d 675, 678 (3d Cir. 1996). Pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"):

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court

proceedings unless the adjudication of the claim –

- (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
- (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d).

According to the United States Supreme Court, a federal court may issue a writ of habeas corpus under § 2254(d)(1) only if it finds that the state court decision on the merits of a claim either (1) was contrary to clearly established federal law, or (2) involved an unreasonable application of clearly established federal law. See Williams v. Taylor, 529 U.S. 362, 412 (2000). “A federal court may not grant a writ of habeas corpus merely because it concludes in its independent judgment that the relevant state court decision applied clearly established federal law erroneously or incorrectly.” Gattis v. Snyder, 278 F.3d 222, 228 (3d Cir. 2002).

Specifically, a federal court may grant the writ under the “contrary to” clause only “if the state court arrives at a conclusion opposite to that reached by [the United States Supreme Court] on a question of law or if the state court decides a case differently than [the United States Supreme Court] has on a set

of materially indistinguishable facts.” Williams, 529 U.S. at 412-13. The court “must first identify the applicable Supreme Court precedent and determine whether it resolves the petitioner’s claim.” Werts v. Vaughn, 228 F.3d 178, 197 (3d Cir. 2000) (citing Matteo v. Superintendent, SCI Albion, 171 F.3d 877, 888 (3d Cir. 1999)), cert. denied, 532 U.S. 980 (2001). In order to satisfy the “contrary to” clause, the petitioner must demonstrate “that Supreme Court precedent **requires** the contrary outcome.” Matteo, 171 F.3d at 888 (emphasis added).

If the petitioner fails to satisfy the “contrary to” clause, the court must determine whether the state court decision was based on an unreasonable application of Supreme Court precedent. See id. Under the “unreasonable application” clause, the court “may grant the writ if the state court identifies the correct governing legal principle . . . but unreasonably applies that principle to the facts of the prisoner’s case.” Williams, 529 U.S. at 413. In other words, a federal court should not grant the petition under this clause “unless the state court decision, evaluated objectively and on the merits, resulted in an outcome that cannot reasonably be justified under existing Supreme Court precedent.” Matteo, 171 F.3d at 890. Respecting a state court’s determinations of fact, a federal court must presume that they are correct. See 28 U.S.C. § 2254(e)(1). The petitioner bears the burden of rebutting the presumption of correctness by clear

and convincing evidence. See id. The presumption of correctness applies to both explicit and implicit findings of fact. See Campbell v. Vaughn, 209 F.3d 280, 286 (3d Cir. 2000), cert. denied, 531 U.S. 1084 (2001). When the state court did not specifically articulate its factual findings but denied a claim on the merits, federal courts on habeas review generally may “properly assume that the state trier of fact . . . found the facts against the petitioner.” Weeks v. Snyder, 219 F.3d 245, 258 (3d Cir.), cert. denied, 531 U.S. 1003 (2000).

A. Insufficient Evidence

Petitioner alleges that there was insufficient evidence presented at the hearing to support a finding that he violated his probation. At the hearing, petitioner’s probation officer alleged that two tests of petitioner’s urine returned results that were positive for illegal drugs, and stated that petitioner had a crack pipe in his possession when he was arrested on an administrative warrant. Petitioner also admitted to testing positive for illegal drugs. The court finds that the Superior Court’s conclusion that petitioner violated his probation was not unreasonable in light of the evidence presented. Thus, petitioner’s application for habeas relief on this ground is denied.

B. Notice of the Alleged Violations and Opportunity to Appear and Present Evidence

Petitioner claims that he was never given notice of the allegations against him, nor was he permitted an opportunity to appear and present evidence on his behalf. The record reflects that, in a letter dated May 3, 2000, the Superior Court informed petitioner of the scheduled date of the hearing, and sent petitioner a copy of the violation report. On appeal, the Delaware Supreme Court found that this letter and report provided petitioner with written notice of the alleged violation, disclosure of the evidence against him, an opportunity to appear and present evidence on his own behalf, an opportunity to question adverse witnesses, and notice of his right to retain counsel. During the revocation hearing, petitioner was allowed the opportunity to supplement his testimony, and he did so by presenting a document to the judge. (D.I. 15) The court finds that the Superior Court reasonably concluded that petitioner was given adequate notice of the alleged violations and the opportunity to appear and present evidence on his own behalf.

C. Appointment of Counsel

Petitioner contends that the Superior Court erred by failing to appoint counsel to represent him at the revocation hearing. The United States Supreme Court has held that counsel should be provided in cases where the probationer

makes such a request, based on a timely and colorable claim (i) that he has not committed the alleged violation of the conditions upon which he is at liberty; or (ii) that, even if the violation is a matter of public record or is uncontested, there are substantial reasons which justified or mitigated the violation and make revocation inappropriate, and that the reasons are complex or otherwise difficult to develop or present.

Gagnon v. Scarpelli, 411 U.S. 778, 790 (1973).

Petitioner was informed before the hearing of his right to retain counsel, and there is no indication in the record that petitioner made any request for representation. Moreover, petitioner admitted to the violation and the court finds no reasons that would make revocation of probation inappropriate in this case. Thus, the court concludes that the state court reasonably applied federal law, and petitioner's claim is without merit.

D. Written Statement of Decision

Petitioner argues that the Superior Court judge failed to provide him with a written explanation of his decision. A sentencing court's memorandum as well as the transcript of a revocation hearing may "provide[] the necessary written statement explaining the evidence relied on and the reason for the decision to revoke probation.'" U.S. v. Barnhart, 980 F.2d 219, 223 n.3 (3d Cir. 1992) (quoting Black v. Romano, 471 U.S. 606, 612 (1985)). In this case, the Superior Court's statement of petitioner's violation, as made and transcribed at the

revocation hearing, clearly and unequivocally attributed the revocation decision to petitioner's testing positive for illegal drugs on two occasions. Moreover, plaintiff received written notice of the allegations prior to the hearing, and admitted that the allegations were true. The Delaware Supreme Court's rejection of this claim was a reasonable application of federal law, and petitioner is not entitled to habeas relief based on this ground.

IV. CONCLUSION

For the reasons stated, petitioner's application for habeas relief pursuant to 28 U.S.C. § 2254 is denied. An appropriate order shall issue.

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O R D E R

At Wilmington, this 18th day of March, 2002, consistent with the memorandum opinion issued this same day;

IT IS ORDERED that:

1. Petitioner Billy G. Johnson's application for habeas relief pursuant to 28 U.S.C. § 2254 (D.I. 1) is denied.

2. Respondents' motion for an extension of time to file an answer (D.I. 11) is granted, and petitioner's motion for an entry of judgment (D.I. 12) is denied.

3. For the reasons stated above, petitioner has failed to make a "substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), and a certificate of appealability is not warranted. See United States v. Eyer, 113 F.3d 470 (3d Cir. 1997); 3d Cir. Local Appellate Rule 22.2 (1998).

Sue L. Robinson
United States District Judge